

# **Title 15 – Business Regulations**

## **Chapter 11 –Dental Health Provider Licensing**

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**Legislative History**

Enacted:

Ordinance 355 Amending STC Title 15, Chapter 11 and Ordinances 351 and 354 (11/3/15), BIA (11/12/15).  
Ordinance 354 Amending STC Title 15, Chapter 11 and Ordinance 351 (10/6/15), BIA (10/20/15).  
Ordinance 351 Adopting Dental Health Provider Licensing Code (9/1/15), BIA (9/10/15).

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*Subchapter I – General Provisions*

**15-11.010 Title.**

This Chapter shall be known as the Swinomish Indian Tribal Community Dental Health Provider Licensing and Standards Code.

[History] Ord. 351 (9/1/15).

**15-11.020 Purpose and Scope.**

The general purposes of this Chapter are:

- (A) To establish a regulatory and licensing system for dental health providers that is based upon and reflects the priorities and values of the Swinomish Indian Tribal Community;
- (B) To regulate dental health providers to protect the health, safety and welfare of the Tribe and its members;
- (C) To assure the patients of dental health providers, the community at large, the Health Program and Dental Services Program, and health plans, government agencies and programs, insurers and other entities that provide payment or reimbursement for the cost of dental health services that adequate minimum standards are established, maintained and adhered to by all dental health providers;
- (D) To set standards for dental health providers;
- (E) To license individuals as dental health providers to engage in specific scopes of practice as authorized under this Chapter;
- (F) To assure that dental health services are provided consistent with best practices, and are culturally appropriate;
- (G) To promote and expand access to adequate numbers of dental health providers; and
- (H) To establish a legal and regulatory structure that will enable operation of the Swinomish Dental Clinic to provide the highest quality dental services in the most efficient and culturally competent manner, making optimal use of the skills of Tribal employees in order to maximize the health care resources available to the Tribe; and
- (I) To reduce and then eliminate disparities in access to dental health care and in oral health experienced among Tribal members and other American Indians and Alaska Natives.

[History] Ord. 351 (9/1/15).

**15-11.030 Authority.**

This Chapter is enacted pursuant to Article VI, Section 1(k) and (s) of the Swinomish Constitution and By-Laws originally ratified by the Tribe on November 16, 1935 and approved by the Secretary of the Interior on January 27, 1936, and as most recently amended on September 7, 1985 , and the inherent sovereign authority of the Swinomish Indian Tribal

Community; rights reserved in the Treaty with the Dwamish, Suquamish, etc., (“Treaty of Point Elliott”), 12 Stat. 927 (January 22, 1855), and such other powers as have been delegated to, vested in, or confirmed in the Tribe through the actions of the United States.

[History] Ord. 351 (9/1/15).

**15-11.040 Findings.**

The Swinomish Indian Senate finds that:

- (A) The Tribe is a Federally-recognized sovereign with the right and responsibility to promote, protect and improve the health and welfare of its members, and to enhance the quality of the lives of all of its members by providing a combination of economic opportunities and a safety net of social services.
- (B) The Tribe provides services and programs for Tribal members including education, housing, senior services, and medical and dental services.
- (C) Oral health is necessary for overall health. Chronic pain, missing teeth, infections and life-threatening emergencies can result from poor oral health care.
- (D) American Indian and Alaska Native people have a higher prevalence of dental caries and untreated tooth decay in all age groups compared to the general population. American Indian and Alaska Native children ages two to five have nearly three times the United States average rate of dental decay.
- (E) Indian Health Service (IHS) 2014 data shows that in the Portland IHS Area, 68 percent of those American Indian and Alaska Native children ages three to five screened had decay experience, and 35 percent had untreated decay.
- (F) Oral health care disparities are attributable to factors including a lack of consistently available dental health professionals in the Indian health system: in the general population there are an average of 1,500 patients per dental provider, while the Swinomish Dental Clinic has an average of more than twice the patients per dental provider.
- (G) The Senate wishes to increase the number of Native health care providers generally and Swinomish health care providers in particular who provide services to Tribal members.
- (H) The Alaska Native Tribal Health Consortium (ANTHC) developed a program to train and utilize dental health aide therapists (DHATs) in Alaska Native tribal health programs, which has operated successfully for more than ten years:

1. The DHATs trained by ANTHC are 88% Native/12% non-Native.
  2. The ANTHC educational program completion rate is 64% (compared to US 2-year college completion rate of about 30%).
  3. The average number of years a DHAT has been in the job: 5.1 yrs.
  4. Seventy-eight percent of DHATs practice in their village or region of origin.
  5. The DHAT retention rate is 81% over 10 years.
  6. There are now 30 certified DHATs and six more have completed their education programs and are in preceptorships.
  7. Thirty-five DHATs have graduated from the Alaska DHAT Educational Program.
  8. Alaska DHATs serve 81 communities, mostly remote villages.
  9. In an investigation by the Centers for Disease Control, only 50% to 60% of 6-year-olds in villages without DHATs saw a dental practitioner during the study year, but in a village where a DHAT worked, all 6-year-olds saw a dental practitioner.
  10. On average, a DHAT sees 800 unique patients per year over 1200 visits. 700 of those visits are preventive in nature.
  11. More than 45,000 people living in remote villages now have regular access to dental care because their community has a DHAT.
  12. Typically, DHATs bring in \$150,000 to \$250,000 more per year than it costs to employ them.
  13. Each DHAT saves the Alaska Tribal Health system and the Medicaid program more than \$40,000 per year in patient travel because patients can get dental care where they live and don't have to travel for it.
  14. The average salary of a dental therapist in Alaska is about half that of a dentist: \$60,000-\$80,000 per year versus \$120,000-\$140,000 per year.
- (I) The IHS's Community Health Aide Program Certification Board (CHAPCB) standards for Dental Health Aides, including DHATs, were adopted in 2002. DHATs have practiced in accordance with international and IHS standards for mid-level dental practice since 2004. The ANTHC training program, which developed its two year curriculum in conjunction with the University of Washington, satisfies all of the

CHAPCB *Standards and Procedures*. The Alaska Tribal Health System Dental Health Aide Program and the CHAPCB standards are consistent with and will further the Senate’s goals for a Tribal dental health program and operation of the Swinomish Dental Clinic.

- (J) The CHAPCB *Standards and Procedures*, initially developed by IHS consistent with international standards for mid-level dental providers, have evolved since 2002 as experience has been gained utilizing such providers in Native communities. The CHAPCB *Standards and Procedures* serve as a well-informed and time-tested resource and inspiration for development of, and partial incorporation into, Swinomish licensing standards.
- (K) Oral health care services are most appropriately delivered by an effective, safe and culturally competent workforce including, but not limited to: dentists, dental hygienists, dental therapists, and dental health aides (DHAs).
- (L) More than half of the procedures currently performed by a dentist at the Swinomish Dental Clinic can be performed at lower cost by a dental therapist acting within the scope of his or her certification, meeting the same standard of care as a dentist, at a lower cost, increasing access to more members and using the Tribe’s limited financial resources more efficiently.
- (M) The Senate desires the Swinomish Dental Clinic to provide the highest quality dental services in the most efficient and culturally competent manner, making optimal use of the skills of Tribal employees in order to maximize the health care resources available to the Tribe and Tribal members. After reviewing the situation carefully, the Senate has concluded that the licensing and employment of DHATs and DHAs will substantially and materially assist in reaching that goal.

[History] Ord. 355 (11/3/15); Ord. 351 (9/1/15).

**15-11.050 Incorporation by Reference.**

Unless stated otherwise or inconsistent with any provision of this Chapter, the requirements for certification and practice of Dental Health Aides in the CHAPCB *Standards and Procedures*, as amended January 22, 2015, or subsequently amended, are incorporated by reference into this Chapter where indicated and shall apply as if set forth herein; *provided*, however, that in the event of a conflict or inconsistency between the CHAPCB *Standards and Procedures* and this Chapter, the provisions of this Chapter shall control. These *Standards and Procedures* may be referred to as “CHAPCB” and shall be cited as “CHAPCB” followed by the applicable section number. The *Standards and Procedures* may currently be accessed at <http://www.akchap.org/html/chapcb.html>.

[History] Ord. 355 (11/3/15); Ord. 351 (9/1/15).

**15-11.060 Definitions.**

- (A) For the purposes of this Chapter, unless explicitly stated otherwise, the following definitions shall apply:
- (1) **"Atraumatic restorative treatment"** means a maximally preventive and minimally invasive approach to stop further progression of dental caries. It involves the removal of soft, completely demineralized carious tooth tissues with hand instruments, and is followed by restoration of the cavity with an adhesive dental material that simultaneously seals the remaining tooth structure that remains at risk.
  - (2) **"Board"** means the Dental Health Provider Licensing Board established and administered pursuant to Subchapter II.
  - (3) **"Chairman"** means the Chairman of the Swinomish Senate, the governing body of the Swinomish Indian Tribal Community.
  - (4) **"Chief Dental Officer"** means the director of the Dental Service Program of the Swinomish Indian Tribal Community.
  - (5) **"Community health aide"** means a community health aide I, II, III, and IV, except when the level is specified.
  - (6) **"Contact hour"** means no less than 50 minutes of instructional or clinical time, provided that
    - (a) a course, seminar, or workshop offered or approved by an organization from which educational or continuing education requirements may be obtained will be accepted for the number of continuing education credits designated by the organization offering it; and
    - (b) academic credit will be converted to contact hours, as follows:
      - (i) one semester academic credit equals 15 contact hours;
      - (ii) one quarter academic credit equals 10 contact hours;
  - (7) **"Dental Health Aide"** means primary dental health aides I and II, dental health aide hygienists, expanded function dental health aides I and II, except as used in CHAPCB S&P Article 30 of Chapter 2 regarding requirements for special classes of dental health aides;

- (8) **“Dental Health Aide Therapist”** means a dental health aide therapist as that term is used in the CHAPCB *Standards and Procedures*.
- (9) **“Dental Hygienist”** means a person who is either:
- (a) in the employ of the United States government, providing dental hygienist services in the discharge of official duties and licensed as a dental hygienist in one of the states or territories of the United States;
  - (b) in the employ of the Swinomish Indian Tribal Community, providing dental hygienist services in the discharge of official duties, and is licensed as a dental hygienist in one of the states or territories of the United States; or
  - (c) licensed as a dental hygienist in Washington.
- (10) **“Dental Services Program”** means the dental program of the Swinomish Indian Tribal Community.
- (11) **“Dental Therapist”** has the same meaning as “dental health aide therapist” as that term is used in the CHAPCB *Standards and Procedures*.
- (12) **“Dentist”** means a person who is:
- (a) in the employ of the United States government, providing dental services in the discharge of official duties and licensed as a dentist in one of the States of the United States;
  - (b) in the employ of the Swinomish Indian Tribal Community, providing dental services in the discharge of official duties and licensed as a dentist in one of the States of the United States; or
  - (c) licensed as a dentist by the State of Washington.
- (13) **“Division of Licensing”** means the Swinomish Division of Licensing within the Department of Planning and Community Development.
- (14) **“Preceptorship”** means a period of practical experience and training under either the direct supervision of a dentist or a dental therapist, dental hygienist or dental health aide hygienist who is under the overall supervision of a dentist.

- (15) **“Reservation”** means all lands and waters within the exterior boundaries of the Swinomish Indian Reservation of the Swinomish Indian Tribal Community.
  - (16) **“Satisfactory performance”** means demonstrating professional skills and knowledge with sufficient expertise to meet the applicable standard of care in a daily work situation at a Swinomish health facility.
  - (17) **“Senate”** means the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.
  - (18) **“Session”** means a course offered by a CHA/P Training Center providing a curriculum approved by the Board.
  - (19) **“Tribal Dental Health Aide”** means a Dental Health Aide (including a primary dental health aide I and II, dental health aide hygienist, and expanded function dental health aide I and II), as that term is defined in CHAPCB 1.20.010, who is licensed by the Tribe under this Chapter.
  - (20) **“Tribal Dental Health Provider”** means a person who is licensed by the Tribe as a Tribal Dentist, Tribal Dental Hygienist, a Tribal Dental Health Aide or a Tribal Dental Therapist.
  - (21) **“Tribal Dental Hygienist”** means a dental hygienist, as that term is defined under this Section, who is licensed by the Tribe under this Chapter.
  - (22) **“Tribal Dental Therapist”** means a dental therapist who is licensed by the Tribe under this Chapter.
  - (23) **“Tribal Dentist”** means a dentist, as that term is defined under this Section, who is licensed by the Tribe under this Chapter.
  - (24) **“Tribe”** or **“Tribal Community”** means the Swinomish Indian Tribal Community.
- (B) For the purposes of this Chapter, unless explicitly stated otherwise, the following definitions of acronyms and of terms incorporating acronyms shall apply:
- (1) **“ART”** means atraumatic restorative treatment;
  - (2) **“BLS”** means Basic Life Support certification, which must include certification in cardiopulmonary resuscitation (“CPR”) techniques based upon training equivalent to that required for completion of a CPR course certified by the American Heart Association or American Red Cross;

- (3) "**CHAM**" means the *Alaska Community Health Aide/Practitioner Manual*, 2006 8 Edition, as revised, or its successor if approved by the CHAPCB;
- (4) "**CHA/P**" means community health aide or community health practitioner;
- (5) "**CHA/P Curriculum**" means the *Community Health Aide Basic Training Curriculum*, 1993, revised as of May, 1997, unless other revisions are adopted in which case "CHA/P Curriculum" will incorporate those revisions;
- (6) "**CHP**" means community health practitioner;
- (7) "**DHA**" means Dental Health Aide;
- (8) "**DHA Advanced Dental Procedures**" means the curriculum set forth in CHAPCB S&P section 7.20.040 [DHA advanced dental procedures];
- (9) "**DHA Core Curriculum**" means the curriculum set forth in CHAPCB S&P section 7.20.0 10 [DHA core curriculum];
- (10) "**DHA Curriculum**" means a curriculum for training dental health aides approved by the CHAPCB pursuant to CHAPCB S&P Article 20 [DHA curricula] of Chapter 7 [certification of DHA training and curriculum];
- (11) "**DHAH**" means dental health aide hygienist;
- (12) "**DHAT**" means Dental Health Aide Therapist;
- (13) "**EFDHA**" means expanded function dental health aide;
- (14) "**eLearning**" means formal instruction where students and instructors are separated by geography, time or both for the majority of the instructional period;
- (15) "**EMT**" means Emergency Medical Technician;
- (16) "**ETT**" means Emergency Trauma Technician;
- (17) "**ISDEAA**" means the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638, as amended, 25 U.S.C. § 450 et seq.; and
- (18) "**PDHA**" means primary dental health aide.

- (C) All other words and phrases have their ordinary and customary meanings.

[History] Ord. 355 (11/3/15); Ord. 354 (10/6/15); Ord. 351 (9/1/15).

### *Subchapter II – Dental Health Provider Licensing Board*

#### **15-11.070 Establishment and Responsibilities.**

There is established a Dental Health Provider Licensing Board, which shall have the duties, responsibilities and authority set forth below and as otherwise necessary to give effect to and implement this Chapter:

- (A) To consult with and advise the Division and, as appropriate, the Senate, including but not limited to guidance as to technical and policy matters arising under this Chapter, and recommendations as to potential amendments to this Chapter;
- (B) To review and approve, reject or modify the procedures and forms developed by the Division to carry out the purposes of this Chapter;
- (C) To conduct hearings and issue decisions on appeals when requested pursuant to Section 15-11.240;
- (D) To consult with persons or entities with specialized expertise or experience that may be beneficial to the Board in carrying out its responsibilities; and
- (E) To advise the Division, Dental Services Program, Health Education and Social Services Committee and Senate, as appropriate, regarding matters related to the purposes and implementation of this Chapter.

[History] Ord. 351 (9/1/15).

#### **15-11.080 Membership.**

- (A) The Board established under Section 15-11.070 shall have at least five (5) members:
  - (1) at least four members shall be appointed by the Chairman of the Senate, as follows:
    - (a) one member who is a dentist or other individual with experience in oral health education and training;

- (b) one member who has education, experience and interest in, and who is committed to improvement in, oral health among American Indians and Alaska Natives;
  - (c) Two members who are at the time of appointment members of the Health, Education and Social Services (HESS) Committee, one of whom shall be the HESS Committee Chair;
- (2) the Chief Dental Officer or his or her representative.
- (B) The term of a Board member shall be five (5) years from the effective date of the member's appointment.
  - (C) The members of the Board shall select a chairperson and a vice-chairperson. The Board chairperson (and vice-chairperson in his or her absence) will chair meetings and shall make procedural determinations such as the scheduling of meetings and the content of meeting agendas.
  - (D) A quorum of the Board shall be three (3) members.
  - (E) The Board shall be advised by Tribal staff designated by the Chairman of the Senate.

[History] Ord. 354 (10/6/15); Ord. 351 (9/1/15).

**15-11.090 Meetings.**

The Board shall meet as often as necessary to carry out its responsibilities in a timely manner and no less than once annually. Meetings shall be scheduled at the call of the Board chairperson or the request of the Division.

[History] Ord. 354 (10/6/15); Ord. 351 (9/1/15).

*Subchapter III – Dental Health Provider Licensing Qualifications and Standards*

**15-11.100 Initial Application and Determination.**

- (A) The Division shall issue a Tribal Dental Health Provider license to a person who
  - (1) applies and provides all information requested, and authorizations for disclosure of all information required, on a form provided by the Division;
  - (2) furnishes evidence satisfactory to the Division that the person:

- (a) meets Tribal minimum standards of character for a position that involves regular contact with, or control over, Indian children or elders, as set forth in the applicable Personnel Policies and Procedures adopted by the Senate;
- (b) has not engaged in conduct that is a ground for imposing disciplinary sanctions or been sanctioned under the provisions applicable to Dental Health Aides (including Dental Health Aide Therapists) set out in CHAPCB 4.10.010 Grounds for Discipline, provided that
  - (i) in CHAPCB 4.10.010 references to “the Board” shall be read to refer to “the Division,” references to a “certificate” shall be read to refer to a “license” and references to “certification” or “certified” shall be read to refer to “licensure” or “licensed”; and
  - (ii) in CHAPCB 4.10.010 references to “dental health aide” shall be read to include a dentist, hygienist or dental therapist who is licensed pursuant to this Chapter; and
- (c) has not been convicted of violating Tribal laws regulating drugs, including but not limited to forging prescriptions or unlawfully distributing drugs or narcotics;
- (3) furnishes evidence satisfactory to the Division that the person has completed the training and education requirements for the Tribal Dental Health Provider license being sought, as follows:
  - (a) for a Tribal Dentist, the requirements of Section 15-11.160;
  - (b) for a Tribal Dental Health Aide, the applicable requirements of CHAPCB 2.10.010(a)(5)(B);
  - (c) for a Tribal Dental Hygienist, the requirements of Section 15-11.170;
  - (d) for a Tribal Dental Therapist, the requirements of CHAPCB 2.30.600;
- (4) furnishes evidence satisfactory to the Division that at the time of consideration of the application the person is employed by the Tribe or is eligible for employment by the Tribe, subject to being qualified to be licensed;
- (5) furnishes evidence satisfactory to the Division that the person will practice as a Tribal Dental Health Provider only when employed by the Tribe;

- (6) furnishes evidence satisfactory to the Division that the person will practice as a Tribal Dental Health Provider only within the scope of practice and licenses granted to the person as specified in this paragraph:
  - (a) (i) for a Tribal Dentist those in Section 15-11.160;
  - (ii) for a Tribal Dental Health Aide those listed in CHAPCB 2.10.010(a)(8)(B) and Section 15-11.150 of this Chapter;
  - (iii) for a Tribal Dental Hygienist those in Section 15-11.170;
  - (iv) for a Tribal Dental Therapist those in CHAPCB 2.30.610(b) and Section 15-11.150 of this Chapter;
- (b) except as required to satisfy the conditions for obtaining a license under this Chapter or when practice would be permitted under CHAPCB section 4.10.010(i)(2) or Section 15-11.120;
- (7) for a Tribal Dental Health Aide applicant, furnishes evidence satisfactory to the Division
  - (a) that the person will practice only under supervision and day-to-day direction of individuals who satisfy the requirements of CHAPCB 2.10.010(a)(9)(A)(i) *provided, however*, that for purposes of this subsection the employment requirement in CHAPCB 2.10.010(a)(9)(A) shall be read to require that the supervising individual be employed by the Swinomish Indian Tribal Community;
  - (b) that the person will comply with the requirements of CHAPCB 2.10.010(a)(9)(B)(ii) and (C) and Sections 15-11.110 and 15-11-150; and
- (8) for a Tribal Dental Therapist applicant, furnishes evidence satisfactory to the Division
  - (a) that the person will practice only under supervision and day-to-day direction of individuals who satisfy the requirements of CHAPCB 2.10.010(a)(9)(A)(i) *provided, however*, that for purposes of this subsection the employment requirement in CHAPCB 2.10.010(a)(9)(A) shall be read to require that the supervising individual be employed by the Swinomish Indian Tribal Community;

- (b) that the person will comply with the requirements of CHAPCB 2.10.010(a)(9)(B)(ii) and (C) as applicable to Dental Health Aide Therapists and Sections 15-11.110 and 15-11-150; and
  - (9) furnishes evidence satisfactory to the Division that the person,
    - (a) if an applicant for licensure as a Tribal Dentist or Tribal Dental Hygienist, has satisfied all applicable continuing education requirements of each state in which the individual is licensed; or
    - (b) if an applicant for licensure as a Tribal Dental Health Aide or Tribal Dental Therapist, has satisfied the requirements set forth in CHAPCB Chapter 3 and Section 15-11.180.
- (B) The Division may issue a provisional Tribal Dental Health Provider license to an applicant in order to allow for active observation of the applicant pursuant to section 15-11.120. Upon completion of the period of observation, the Division shall either be issued a license to the applicant or shall revoke the provisional license.
- (C) The Division shall deny a Dental Health Provider's application for a license if the applicant does not provide all information, authorizations, and evidence required by the Division to demonstrate entitlement to a license pursuant to this Chapter. The Division shall give written notice to the applicant of the denial of the license application, and shall inform the applicant of the right to request a hearing in accordance with Section 15-11.240.
- (D) The Division may issue a Tribal Dental Health Provider license which contains limitations upon the scope of the applicant's authorized practice. The Division shall give written notice to the applicant of the imposition of such limitations on the scope of the authorized practice, and shall inform the applicant of the right to request a hearing in accordance with Section 15-11.240.
  - (1) An individual whose Tribal license contains limitations upon the scope of authorized practice may, after having practiced pursuant to the limited Tribal license for no less than 90 days, request in writing that the Division modify or lift the license limitation. Any such request must be accompanied by a written statement from the supervising dentist supporting the modification or lifting of the limitation.
  - (2) Upon receipt of such a written request, the Division may lift completely or may modify the limitations imposed upon the license. The Division shall give written notice to the applicant of the modification of limitations on the scope of the authorized practice, and shall inform the applicant of the right to request a hearing in accordance with Section 15-11.240.

- (E) (1) All license applications, and documents and information concerning an application, submitted to or obtained by the Division pursuant to this Code shall be strictly confidential. The Division shall only release an application and related documents and information pursuant to a written authorization signed by the applicant, or pursuant to an order of the Swinomish Tribal Court, issued after notice to the Division and an opportunity to be heard upon the matter.
- (2) The names of all individuals possessing an active license issued pursuant to this Code shall be made available to the public.

[History] Ord. 355 (11/3/15); Ord. 354 (10/6/15); Ord. 351 (9/1/15).

**15-11.110 Supervision Requirements.**

- (A) A Tribal Dental Health Aide must comply with
  - (1) the supervision requirements of CHAPCB 2.30.010 or any supervision requirements imposed as a condition of a Tribal license the Dental Health Aide holds; *provided, however*, that for purposes of this subsection the employment requirement in CHAPCB 2.10.010(a)(9)(A) shall be read to require that the supervising individual be employed by the Swinomish Indian Tribal Community; and
  - (2) any conditions imposed by the Dental Health Aide's clinical supervisor or the Chief Dental Officer.
- (B) A Tribal Dental Hygienist must comply with
  - (1) any supervision requirements imposed as a condition of any State or Tribal license the Tribal Dental Hygienist holds; and
  - (2) any conditions imposed by the Tribal Dental Hygienist's dental supervisor or the Chief Dental Officer.
- (C) A Tribal Dental Therapist must comply with
  - (1) the supervision requirements of CHAPCB 2.30.010 as applicable to Dental Health Aide Therapists or any supervision requirements imposed as a condition of a Tribal license the Dental Therapist holds; *provided, however*, that for purposes of this subsection the employment requirement in CHAPCB 2.10.010(a)(9)(A) shall be read to require that the supervising individual be employed by the Swinomish Indian Tribal Community; and

- (2) any conditions imposed by the Dental Therapist's clinical supervisor or the Chief Dental Officer.

[History] Ord. 355 (11/3/15); Ord. 351 (9/1/15).

**15-11.120 Scope of Practice Prior to Licensing.**

A person who is employed by the Tribe may perform services of a Tribal Dental Health Aide or a Tribal Dental Therapist prior to being licensed under this Chapter to the extent the services are performed:

- (A) as part of training required for licensing;
- (B) as part of a preceptorship required under CHAPCB sections 2.30.100(b), 2.30.220(c)(1)(B) or (c)(2), 2.30.230(d), 2.30.240(c)(1)(D) or (c)(2), 2.30.250(c), 2.30.260(d), 2.30.400(b), 2.30.500(b), 2.30.550(d), or 2.30.600(3);
- (C) as authorized by a provisional Tribal Dental Health Provider license issued pursuant to Section 15-11.100(B);
- (D) by a person who has been previously certified as a Dental Health Aide or a Dental Health Aide Therapist by the Indian Health Service and is undergoing a further preceptorship so that the supervising dentist can evaluate his or her skills prior to making recommendations for licensing; or
- (E) while an application for licensure is pending after successful completion of all required training and preceptorships.

[History] Ord. 355 (11/3/15); Ord. 351 (9/1/15).

**15-11.130 Licensure by Credentials.**

The Division may determine that one or more of the requirements of CHAPCB Sections 2.30.100 through 2.30.610 have been met by a person who provides evidence satisfactory to the Division that the person has health care training, education and experience at least equivalent in scope, quality, and difficulty to those imposed under these sections, provided the applicant demonstrates to the satisfaction of the Division that the applicant is adequately familiar with the CHAPCB and will limit his or her practice to the scope of practice of a Tribal Dental Health Aide or Tribal Dental Therapist under this Chapter.

[History] Ord. 355 (11/3/15); Ord. 354 (10/6/15); Ord. 351 (9/1/15).

#### **15-11.140 License by Reciprocity.**

The Division may issue a Tribal Dental Health Provider license by reciprocity to an individual:

- (A) who holds a current dental provider license of any type issued by any State, including dentists, dental hygienists, dental health aides and dental health aide therapists, or
- (B) who holds a current Dental Health Aide certificate issued by the CHAPCB,
- (C) who holds a Dental Health Aide Therapist certificate issued by the CHAPCB, and
- (D) who otherwise qualifies to be employed as a Tribal Dental Health Provider, including satisfying applicable requirements of Sections 15-11.100, 15-11.150, 15-11.160 and 15-11.170.

A Tribal Dental Health Provider license issued by reciprocity shall be valid for the full scope of practice allowed by the individual's underlying State license or CHAPCB certificate, and shall similarly be subject to any limits or restrictions that apply to the individual's license or certificate; *provided, however*, that the Division shall not recognize or enforce any limits or restrictions of a State license or CHAPCB certificate that are contrary to Federal law, to the provisions of this Chapter or a license issued pursuant to this Chapter, or to other laws or public policy of the Tribe.

[History] Ord. 355 (11/3/15); Ord. 354 (10/6/15); Ord. 351 (9/1/15).

#### **15-11.150 Tribal Dental Health Aide Training, Education, Supervision and Competencies Requirements.**

A person who otherwise satisfies the requirements of this Chapter must also satisfy and comply with the following requirements for training, education, supervision, and competencies, if seeking to be licensed:

- (A) as a Tribal Primary Dental Health Aide I, as provided in CHAPCB 2.30.100 and 2.30.110;
- (B) as a Tribal Primary Dental Health Aide II, as provided in CHAPCB 2.30.200 and 2.30.210;
- (C) as a Tribal Dental Health Aide Hygienist, as provided in CHAPCB 2.30.300 and 2.30.310;
- (D) as a Tribal Expanded Function Dental Health Aide I, as provided in CHAPCB 2.30.400 and 2.30.410;

- (E) as a Tribal Expanded Function Dental Health Aide II, as provided in CHAPCB 2.30.500 and 2.30.510; and
- (F) to perform:
  - (1) sealants, as provided in CHAPCB 2.30.220;
  - (2) dental prophylaxis, as provided in CHAPCB 2.30.230;
  - (3) dental radiology, as provided in CHAPCB 2.30.240;
  - (4) dental assistant functions, as provided in CHAPCB 2.30.250;
  - (5) atraumatic restorative treatment, as provided in CHAPCB 2.30.260;
  - (6) stainless steel crown placements, as provided in CHAPCB 2.30.550;
- (G) An applicant to be licensed as a Tribal Dental Health Aide must demonstrate that the person has formal education, training and/or personal or professional experience that would be reasonably expected to result in cultural competency;
- (H) A person who otherwise satisfies the requirements of this Section to be licensed must agree to limit his or her scope of practice to that authorized under his or her Tribal license and any further limitations imposed by the Chief Dental Officer or his or her Tribal supervisor.

[History] Ord. 355 (11/3/15); Ord. 354 (10/6/15); Ord. 351 (9/1/15).

**15-11.160 Tribal Dentist Training, Education, Supervision and Competency.**

A person who otherwise satisfies the requirements of this Chapter to be licensed as a Tribal Dentist must:

- (A) possess and maintain an active license as a dentist in a State of the United States, as prescribed in Section 15-11.060(A)(10),
- (B) report to the Division any limitation on the license required under subsection (A);
- (C) demonstrate that the person has formal education, training and/or personal or professional experience that would be reasonably expected to result in cultural competency;

- (D) agree to limit his or her scope of practice to that authorized under his or her State or Tribal license and any further limitations imposed by the Chief Dental Officer or his or her tribal supervisor; and
- (E) have experience working with and supervising Dental Health Aides, including Dental Health Aide Therapists, or Tribal Dental Therapists or have completed a course acceptable to the Board regarding supervision of Dental Health Aides or Tribal Dental Therapists.

[History] Ord. 355 (11/3/15); Ord. 351 (9/1/15).

**15-11.170 Tribal Dental Hygienist Training, Education, Supervision and Competency.**

A person who otherwise satisfies the requirements of this Chapter to be licensed as a Tribal Dental Hygienist must:

- (A) possess and maintain an active license as a Tribal Dental Hygienist, as prescribed in Section 15-11.060(A)(8);
- (B) report to the Division any limitation on the license required under subsection (A);
- (C) demonstrate that the person has formal education, training and/or personal or professional experience that would be reasonably expected to result in cultural competency; and
- (D) agree to limit his or her scope of practice to that authorized under his or her State or Tribal license, and act in accordance with that agreement and with any further limitations imposed by the Chief Dental Officer or his or her direct dental supervisor.

[History] Ord. 355 (11/3/15); Ord. 351 (9/1/15).

**15-11.171 Tribal Dental Therapist Training, Education, Supervision and Competencies Requirements.**

A person who otherwise satisfies the requirements of this Chapter must also satisfy and comply with the following requirements for training, education, supervision, and competencies, if seeking to be licensed as a Tribal Dental Therapist:

- (A) as provided in CHAPCB 2.30.600 and 610; and
- (B) An applicant to be licensed as a Tribal Dental Therapist must demonstrate that the person has formal education, training and/or personal or professional experience that would be reasonably expected to result in cultural competency;

(C) A person who otherwise satisfies the requirements of this Section to be licensed must agree to limit his or her scope of practice to that authorized under his or her Tribal license and any further limitations imposed by the Chief Dental Officer or his or her Tribal supervisor.

[History] Ord. 355 (11/3/15).

**15-11.180 Continuing Education.**

- (A) A Tribal Dentist or Tribal Dental Hygienist must satisfy all continuing education requirements required by each jurisdiction in which the Dentist or Dental Hygienist is licensed and any additional requirements imposed by the Director of the Dental Program.
- (B) A Tribal Dental Health Aide must comply with all requirements for continuing education identified in CHAPCB 3.10.050 and, if licensed to perform dental radiology the additional requirements of CHAPCB 2.30.240(c).
- (C) A Tribal Dental Therapist must comply with all requirements for continuing education identified in CHAPCB 3.10.050 and, if licensed to perform dental radiology the additional requirements of CHAPCB 2.30.240(c).
- (D) Approved continuing education programs for a Tribal Dental Health Aide or Tribal Dental Therapist must satisfy the requirements of CHAPCB 3.10.200, provided:
  - (1) sponsoring organizations under CHAPCB 3.10.200(b) may also include any state dental society or association or any state dental hygiene society or association; and
  - (2) the Board may approve a continuing education program or self-study education program developed or recommended by the Tribe's Dental Services Program provided it satisfies conditions consistent with the requirements of CHAPCB 3.10.200(c) or (d).

[History] Ord. 355 (11/3/15); Ord. 351 (9/1/15).

**15-11.190 Tribal Dental Health Aide and Tribal Dental Therapist Training and Curriculum.**

Tribal Dental Health Aide and Tribal Dental Therapist training and curriculum must satisfy the requirements of CHAPCB Chapter 7 or their equivalent, provided that training or

curriculum that does not directly satisfy the requirements of CHAPCB must be presented to the Board for review and approval.

[History] Ord. 355 (11/3/15); Ord. 351 (9/1/15).

***Subchapter IV – Discipline, Suspension or Revocation of a License  
of a Dental Health Provider***

**15-11.200 Reports to and Investigations by Division of Licensing.**

- (A) Whenever a person has a reasonable basis to believe that a Tribal Dental Health Provider has committed an action that would, if substantiated, constitute a ground for discipline under Section 15-11.220, that person may file a written and signed report with the Division of Licensing, stating fully the facts of the alleged action or inaction and the basis for believing them to be true.
- (B) The Division shall investigate, or caused to be investigated, such reports. The Division may consult with or retain appropriate oral health experts to conduct the investigation.
- (C) The Division shall also investigate, or cause to be investigated, such information that may come to be known to the Division and that gives rise to a reasonable suspicion that grounds for discipline may exist under Section 15-11.220.
- (D) The Division’s investigations shall be tailored to the circumstances reported to or known by the Division.
  - (1) The Division may interview the Tribal Dental Health Provider, reporting party or other persons who may have information that is relevant to, or is reasonably likely to lead to the discovery of information that is relevant to, the existence of a ground for discipline.
  - (2) The Division may direct that the Tribal Dental Health Provider provide documents or information, and request that the reporting party or other persons provide documents or information, that is relevant to, or is reasonably likely to lead to the discovery of information that is relevant to, the existence of a ground for discipline.

[History] Ord. 355 (11/3/15); Ord. 351 (9/1/15).

**15-11.210 Determination by Division of Licensing.**

- (A) If, after conducting an investigation pursuant to Section 15-11.200, the Division of Licensing has reasonable cause to believe that any grounds for discipline exist under

Section 15-11.220, the Division shall notify the Tribal Dental Health Provider in writing, indicating the nature of those grounds and the action, if any, necessary for the Provider to correct those grounds.

- (B) The notice shall also inform the Tribal Dental Health Provider of his or her right to provide a responsive statement, documents or other evidence to the Division within a specified period of time, not to exceed fifteen (15) calendar days, as established by the Division as appropriate to the circumstances, taking into account the seriousness and urgency of the stated grounds for discipline in relation to the health, welfare, and safety of the Reservation.
- (C) Upon receipt of a responsive statement or additional evidence, the Division shall, with or without such further investigation as the Division may deem appropriate, dismiss the report or impose disciplinary sanctions under Section 15-11.220-230.

[History] Ord. 354 (10/6/15); Ord. 351 (9/1/15).

#### **15-11.220 Grounds for Discipline.**

The Division may impose a disciplinary sanction on any person holding a Tribal license under this Chapter if the Division finds that the person has violated any of the conditions applicable to dental health aides set out in CHAPCB 4.10.010 or has committed an act that under Tribal law would disqualify the person from receiving a license under this Chapter, provided that:

- (A) in CHAPCB 4.10.010 references to “the Board” shall be read to refer to “the Division,” references to a “certificate” shall be read to refer to a “license” and references to “certification” or “certified” shall be read to refer to “licensure” or “licensed”;
- (B) in CHAPCB 4.10.010 references to “dental health aide” shall be read to include a dentist, hygienist or dental therapist who is licensed pursuant to this Chapter;
- (C) violation of Tribal drug laws shall be subject to the same sanction as described in CHAPCB 4.10.010(i)(7); and
- (D) failure to comply with mandatory reporting laws of the State of Washington or of the Tribe shall be subject to the same sanction as described in CHAPCB 4.10.010(i)(16).

[History] Ord. 355 (11/3/15); Ord. 351 (9/1/15).

**15-11.230 Sanctions.**

If the Division finds that a person holding a license as a Tribal Dental Health Provider has violated one or more of the grounds for discipline referenced in Section 15-11.200, the Division may impose the following sanctions singly or in combination:

- (A) permanently revoke a license to practice;
- (B) suspend a license for a determinate period of time;
- (C) publically or privately censure a person holding a license;
- (D) publically or privately issue a letter of reprimand;
- (E) place a person holding a license on probationary status and require the person to
  - (1) report regularly to the Division upon matters involving the basis of probation;
  - (2) comply with conditions of practice or limit practice to those areas prescribed;
  - (3) continue professional education until a satisfactory degree of skill has been attained in those areas determined by the Division to need improvement.
- (F) The sanction(s) shall take effect twenty (20) days after the date of notice of the Division's action; *provided*, however, that the Division may summarily suspend a license in accordance with Section 15-11.260, and *provided further* that the person who is sanctioned may request a stay of the sanction pending hearing in accordance with Section 15-11.240(B)(2).

[History] Ord. 355 (11/3/15); Ord. 351 (9/1/15).

**15-11.240 Request for Hearing Before the Dental Health Provider Licensing Board.**

- (A) A person whose license application, and a Tribal Dental Health Provider whose license under this Chapter, is limited, conditioned or otherwise affected by, and who is personally aggrieved by, a decision of the Division may request a hearing before the Dental Health Provider Licensing Board by filing a request for a hearing within twenty (20) calendar days from the date of notice of the challenged decision. Failure to timely file a request for a hearing waives all further right to appeal the decision at issue.
- (B) Any request for a hearing must be received by the Division of Licensing, and shall include:

- (1) The reasons for the hearing request, specifically identifying any claimed errors involving any of the following in the challenged decision:
    - (a) Conclusions as to Swinomish law (including CHAPCB provisions incorporated by reference), as to Federal law, or in the application of such law;
    - (b) Any factual findings or statements of facts; or
    - (c) Any arbitrary or capricious action; and
    - (d) All documents or other evidence supporting the appeal.
  - (2) The relief sought by the appellant, including a request for a stay of any sanction imposed or action taken by the Division.
- (C) The Board shall give the appellant written notice of the time and location of any hearing. Such notice shall be transmitted to the appellant in such a manner that the notice is reasonably calculated to be received by the appellant at least seven (7) days in advance of the date of the hearing. The Board's notice shall inform the appellant of his or her right to present evidence and argument, and to be represented or assisted by an attorney or spokesperson authorized to practice in the Swinomish Tribal Court. The Division of Licensing may be represented by the Office of Tribal Attorney or other attorney or spokesperson authorized to practice in the Swinomish Tribal Court.
- (D) The hearing shall be held within thirty (30) days of the filing of the request for hearing; *provided however*, that the Board may, in its discretion, set the hearing for a later date upon request of a party and for good cause shown.
- (E) The hearing shall be conducted by the Board or, at the Board's discretion, by a panel of the Board or by a hearing officer appointed by the Board, in which case the panel or hearing officer shall carry out the Board's functions set forth in the following subsections.
- (F) The hearing shall be on the record established before the Board and the materials submitted with the request for hearing.
- (G) A hearing under this Section shall proceed as follows:
- (1) The Board's proceeding shall be guided by the objective of admitting probative and reliable evidence that will facilitate the determination of the truth in a fundamentally fair proceeding without ancillary disputes over evidentiary issues.

- (2) The Division of Licensing shall first offer the Board relevant documents and evidence adduced in the course of any investigation by the Division, including the decision appealed from, the application or license at issue, and may present argument to the Board. Board members may ask questions of the Division staff and its representative, if any, at the hearing.
  - (3) The appellant may offer the Board relevant documents and evidence adduced in the course of the investigation by the Division, including the decision appealed from, the application or license at issue, and may present argument to the Board. Board members may ask questions of the appellant and the appellant's representative, if any, at the hearing.
  - (4) The Board may request additional information, evidence or arguments from a party and may, upon request of a party or on its own initiative, call witnesses, all as determined by the Board to be reasonably necessary for a fair determination of the matter in dispute.
  - (5) An applicant for a license, renewal of a license, or removal of limitations or restrictions on a license bears the burden of proof of entitlement to the relief requested. The Division bears the burden of proof of entitlement to any sanction imposed on an individual holding a license.
  - (6) Following the hearing, at a time and in a place and manner selected by the Board, the Board shall deliberate on the appeal. Deliberations may be conducted off the record in executive session.
  - (7) Following deliberations, the Board shall issue a written notice of decision stating the Board's determination and briefly explaining the grounds for its determination. The Board, in its discretion, may issue a decision on the merits or may remand the matter to the Division for further proceedings in accordance with the Board's ruling. The Board may direct the Division staff to prepare a written notice of decision, and the Board may orally announce its decision.
  - (8) The Board shall mail the written notice of decision to the appellant, Division and any attorney or spokesperson who has entered an appearance in the hearing proceedings.
- (H) The Board shall make an audio record of all hearings.
- (I) The Division may require that the reasonable costs of preparing copies of the administrative record or of transcribing a record of a hearing be paid by the party requesting copies or a transcript.

- (J) The Board shall affirm the decision of the Division unless the Board determines that the decision is either:
- (1) Contrary to Swinomish law (including CHAPCB provisions incorporated by reference) or Federal law; or
  - (2) Not supported by a preponderance of evidence in the record of proceedings held before the Board; or
  - (3) Arbitrary or capricious.
- (K) If the Board determines that the Division's decision will not be affirmed for one of the reasons set forth in Section 15-11.240(J)(1 – 3), then the Board may reverse the decision of the Division, remand the matter to the Division for further investigation and review, or may modify the Division's decision in accordance with the Board's factual findings and legal conclusions.
- (L) A decision of the Board on the merits affirming the Division's decision in whole or with modifications shall be immediately effective, and shall not be subject to a stay by the Board, the Swinomish Tribal Court or the Court of Appeals.

[History] Ord. 355 (11/3/15); Ord. 351 (9/1/15).

**15-11.250 Modifying Sanctions or License Limitations.**

The Division may withdraw probationary status, remove limitations of or conditions on practice or modify other sanctions imposed under this Chapter if it finds that the licensee has demonstrated that prior deficiencies have been corrected and that it is in the best interest of the Tribe to do so.

[History] Ord. 355 (11/3/15); Ord. 351 (9/1/15).

**15-11.260 Summary Suspension.**

The Division may summarily and immediately suspend a license effective before any hearing that may be requested if the Division finds that the licensee poses a clear and immediate danger to patients, public health or safety if the licensee continues to practice. A person whose license is suspended under this Section shall be entitled to request a hearing and to appeal pursuant to Subchapter VI. The suspension shall remain in effect until the conclusion of the hearing and appeal process.

[History] Ord. 351 (9/1/15).

**15-11.270 Prohibition of Unlicensed Practice.**

No person shall provide dental services for which a license is required by this Chapter without first applying for and being granted such a license by the Division of Licensing, and continuing to maintain an active license in good standing.

[History] Ord. 351 (9/1/15).

**15-11.280 Surrender of a License.**

A person licensed under this Chapter shall surrender the license to the Division if, at any time during the period in which it would otherwise be in effect, the person no longer meets any requirement of initial certification under Section 5-11.100, except Subsection 5-11-100(D).

[History] Ord. 351 (9/1/15).

***Subchapter V – Enforcement***

**15-11.290 Enforcement.**

- (A) The Division of Licensing shall take any action authorized by law to ensure compliance with or to prevent violation of this Chapter.
- (B) In the event the Division determines that a person is in violation of this Chapter, failure to correct the violation within the time period allowed shall subject the violator to civil remedies set forth in Sections 15-11.300 and 15-11.310.

[History] Ord. 351 (9/1/15).

**15-11.300 Civil Enforcement.**

- (A) The provisions and remedies in this Chapter may be enforced by the Division through civil proceedings against:
  - (1) any person who has violated or is violating any provision of this Chapter; or
  - (2) as otherwise may be provided in the Swinomish Tribal Code.
- (B) In addition to relief provided by any other provision of this Chapter or the Swinomish Tribal Code, this Chapter may be enforced through declaratory and injunctive relief requiring any person to come into compliance with, or to cease non-compliance with, this Chapter.

[History] Ord. 351 (9/1/15).

**15-11.310 Civil Penalties.**

In addition to any other civil or criminal penalty or remedy that may be provided in any other section of the Swinomish Tribal Code, any person found by the Tribal Court to have violated any provision of this Chapter shall be subject to civil penalties imposed by the Tribal Court in an amount not less than one hundred dollars (\$100.00) or more than five hundred dollars (\$500.00) per violation; provided that for the purpose of assessing a civil penalty, each day that the person is in violation of this Chapter may be considered a separate violation.

[History] Ord. 351 (9/1/15).

*Subchapter VI – Appeals, Time and Finality, and  
Sovereign Immunity*

**15-11.320 Appeals.**

- (A) A person whose license application, and a Tribal Dental Health Provider whose license under this Chapter, is limited, conditioned or otherwise affected by, and who is personally aggrieved by a decision of the Board may appeal such decision to Swinomish Tribal Court. The appeal to Tribal Court must be filed within thirty (30) calendar days from the date of the decision. Any appeal to the Tribal Court shall identify the name of the person seeking review, shall specify the interest of the person in the decision appealed from, and shall name as respondent only the Director of the Department of Planning and Economic Development in his or her official capacity. The appellant shall attach a copy of the notice of action or decision issued by the Board that is being appealed, and shall state in the notice of appeal each and every one of the factual or legal grounds upon which the action or decision is claimed to be unlawful or otherwise invalid or incorrect. The appellant shall serve a copy of the appeal upon the Division of Licensing and the Office of Tribal Attorney in accordance with Swinomish Tribal Code Title 3, Chapter 2 - Rules of Civil Procedure then in effect.
- (B) The Tribal Court shall set a time and place for a hearing and provide written notice of the hearing to the person filing the appeal, the Division of Licensing and the Office of Tribal Attorney.
- (C) The review on appeal by the Swinomish Tribal Court shall be limited to the issues identified in the notice of appeal. The Court shall not consider any issue that was not raised in the notice of appeal.

- (D) The Tribal Court shall direct the Division of Licensing to assemble and file an administrative record of all evidence before the Division at the time of the decision appealed from. The Division shall provide a copy of the administrative record to the appellant and to the Office of Tribal Attorney.
- (E) The Tribal Court may accept additional evidence that is material and relevant to the issues on appeal only upon a showing by the appellant or the Director of the Department of Planning and Economic Development that the evidence could not reasonably have been presented to the Board and that the evidence may reasonably be expected to change the decision appealed.
- (F) The Tribal Court review shall be conducted by the Court, without a jury. Subject to the limitation in Subsections (D) and (E) and the nature of the proceeding as judicial review of an administrative decision, the review shall be in accordance with those provisions of the Swinomish Rules of Civil Procedure that are determined to be applicable by the Tribal Court; *provided*, however, that discovery under such Rules shall ordinarily not be allowed and shall be permitted only as determined by the Court to be necessary to allow judicial review of the issues raised on appeal.
- (G) The Tribal Court shall consider the evidence in the administrative record, such additional evidence as may be admitted pursuant to Subsection (E), and the arguments presented.
- (H) After a full and complete review the Tribal Court shall issue a written decision, setting forth the reasons for the decision. Notice and a copy of the decision shall be sent to the appellant, Division of Licensing and Office of Tribal Attorney.
- (I) The Tribal Court shall affirm the decision of the Division of Licensing upon review unless the appealing party demonstrates to the Court that the decision of the Division:
  - (1) Is contrary to Swinomish law (including CHAPCB provisions incorporated by reference) or Federal law; or
  - (2) Is not supported by substantial evidence before the Division of Licensing; or
  - (3) Is arbitrary or capricious; or
  - (4) Should be reconsidered by the Board in light of additional evidence considered by the Court that was not presented to the Board, could not reasonably have been presented to the Board and that may reasonably be expected to change the decision appealed.
- (J) If the Court determines that the appellant has met the burden set forth in Subsection (I), then the Court shall reverse the decision appealed from and shall remand the matter to the Board for further proceedings in accordance with the Court's ruling.

The Tribal Court shall not have authority to grant any relief to the appellant other than an order reversing the decision appealed from and remanding the matter to the Board for further proceedings. If the Court determines that the appellant has not met the burden set forth in Subsection (I), then the Court shall issue an order affirming the decision appealed from.

[History] Ord. 355 (11/3/15); Ord. 351 (9/1/15).

**15-11.330 Appeals from the Tribal Court.**

- (A) Any appeal from a decision of the Tribal Court shall be filed and adjudicated in accordance with the Swinomish Rules of Appellate Procedure.
- (B) The review by the Swinomish Tribal Court of Appeals shall be limited to the evidentiary record made in the proceedings before the Tribal Court. The Court of Appeals shall not consider any issue, argument or evidence that was not raised or presented in the record of proceedings before the Tribal Court.
- (C) The Tribe may charge an appealing party the reasonable costs of preparing copies of the record for the Swinomish Tribal Court of Appeals and for the appealing party.
- (D) The Court of Appeals shall affirm the decision of the Tribal Court upon review unless the appellant demonstrates to the Court that the decision of the Division of Licensing:
  - (1) Is contrary to Swinomish law (including CHAPCB provisions incorporated by reference) or Federal law;
  - (2) Is not supported by substantial evidence before the Division of Licensing; or
  - (3) Is arbitrary or capricious; or
  - (4) Should be reconsidered by the Board in light of additional evidence considered by the Court that was not presented to the Board, could not reasonably have been presented to the Board and that may reasonably be expected to change the decision appealed.
- (E) If the Court determines that the aggrieved party has met the burden set forth in Subsection (D), then the Court of Appeals shall reverse the decision appealed from and shall remand the matter to the Tribal Court for remand to the Board for further proceedings in accordance with the Court's ruling. The Court of Appeals shall not have authority to grant any relief other than an order reversing the decision appealed from and remanding the matter to the Tribal Court for remand to the Board.

- (F) The decision of the Court of Appeals shall be final, and is not subject to further review.

[History] Ord. 351 (9/1/15).

**15-11.340 Tribal Administrative Remedies and Tribal Court.**

All cases or controversies arising under the terms and provisions of this Chapter shall be heard only in the Swinomish Tribal Court, and only as provided in this Chapter.

[History] Ord. 351 (9/1/15).

**15-11.350 Time and Finality.**

- (A) The date of notice of any decision shall be the date on which the decision is mailed by the person or entity making the decision to the last known address of the person who is the subject of the decision. The date of notice shall be stated in the decision.
- (B) All time periods set forth in this Chapter shall be calculated in accordance with Rule 3-02.100(A) and (B), "Computation and Extension of Time", of the Swinomish Rules of Civil Procedure.
- (C) If a decision of the Division of Licensing or the Tribal Court is not appealed within the time period set forth in this Subchapter, then that decision is final and conclusive, and is not subject to further review.

[History] Ord. 354 (10/6/15); Ord. 351 (9/1/15).

**15-11.360 Sovereign Immunity.**

The sovereign immunity of the Tribe is not in any way waived or limited by this Chapter, or by any action commenced pursuant to this Chapter, and nothing in this Chapter shall constitute or be construed as a waiver of the sovereign immunity of the Tribe. Such sovereign immunity shall extend to the Tribe, the Senate, the Department of Planning and Community Development, the Division of Licensing, the Dental Health Provider Licensing Board and each of the members of the Board, all Tribal officials, employees, any individual or entity with whom the Tribe has contracted to provide services pursuant to or in accordance with this Chapter, as to all actions taken in, or concerning, the administration or enforcement of this Chapter, and as to all actions taken pursuant to any authority of any action, decision or order authorized by this Chapter.

[History] Ord. 351 (9/1/15).

*Subchapter VII – Repealer, Severability and Effective Date*

**15-11.370 Repealer.**

[Reserved]

[History] Ord. 351 (9/1/15).

**15-11.380 Severability.**

The invalidity of any section, clause, sentence, or provision of this Chapter shall not affect the validity of any part of this Chapter that can be given effect without such invalid part or parts.

[History] Ord. 351 (9/1/15).

**15-11.390 Effective Date.**

This Chapter shall take effect upon approval by the Secretary of the Interior; provided, however, that the prohibition in Section 15-11.270 of practice without a license issued pursuant to this Chapter shall take effect on January 01, 2016.

[History] Ord. 351 (9/1/15).